

08/01/03  
17119 U.S. PTO

Practitioner's Docket No. U 014735-7

PATENT

Preliminary Classification:

Proposed Class:

Subclass:

NOTE: "All applicants are requested to include a preliminary classification on newly filed patent applications. The preliminary classification, preferably class and subclass designations, should be identified in the upper right-hand corner of the letter of transmittal accompanying the application papers, for example 'Proposed Class 2, subclass 129.'" M.P.E.P. Section 601, 7th ed.

08306 U.S. PTO  
10/632950  
08/01/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mail Stop Patent Application  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

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00140

PATENT TRADEMARK OFFICE

NEW APPLICATION TRANSMITTAL

Transmitted herewith for filing is the patent application of

Inventor(s):  
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WARNING: 37 C.F.R. Section 1.41(a)(1) points out:

"(a) A patent is applied for in the name or names of the actual inventor or inventors.

(1) The inventorship of a nonprovisional application is that inventorship set forth in the oath or declaration as prescribed by Section 1.63, except as provided for in Section 1.53(d)(4) and Section 1.63(d). If an oath or declaration as prescribed by Section 1.63 is not filed during the pendency of a nonprovisional application, the inventorship is that inventorship set forth in the application papers filed pursuant to Section 1.53(b), unless a petition under this paragraph accompanied by the fee set forth in Section 1.17(I) is filed supplying or changing the name or names of the inventor or inventors."

CERTIFICATION UNDER 37 C.F.R. 1.10\*

(Express Mail label number is *mandatory*.)

(Express Mail certification is *optional*.)

I hereby certify that this correspondence and the documents referred to as attached therein are being deposited with the United States Postal Service on this date AUGUST 1, 2003, in an envelope as "Express Mail Post Office to Addressee", mailing Label Number EV 327549205 US, addressed to the Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450

GERALDINE MARTI

(type or print name of person mailing paper)

Signature of person mailing paper

WARNING: Certificate of mailing (first class) or facsimile transmission procedures of 37 C.F.R. 1.8 cannot be used to obtain a date of mailing or transmission for this correspondence.

\*WARNING: Each paper or fee filed by "Express Mail" must have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. 1.10(b).

"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will not be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

(New Application Transmittal—page 1 of 23) 4-1

EXPRESS MAIL LABEL  
NO.: EV 327549205 US

For (title): NOVEL HETEROCYCLIC COMPOUNDS HAVING ANTIBACTERIAL  
ACTIVITY: PROCESS FOR THEIR PREPARATION AND PHARMACEUTICAL  
COMPOSITIONS CONTAINING THEM

## 1. Type of Application

This new application is for a(n)

*(check one applicable item below)*

- ☐ Original (nonprovisional)
- ☐ Design
- ☐ Plant

**WARNING:** *Do not use this transmittal for a completion in the U.S. of an International Application under 35 U.S.C. 371(c)(4), unless the International Application is being filed as a divisional, continuation or continuation-in-part application.*

**WARNING:** *Do not use this transmittal for the filing of a provisional application.*

**NOTE:** If one of the following 3 items apply, then complete and attach ADDED PAGES FOR NEW APPLICATION TRANSMITTAL WHERE BENEFIT OF A PRIOR U.S. APPLICATION CLAIMED and a NOTIFICATION IN PARENT APPLICATION OF THE FILING OF THIS CONTINUATION APPLICATION.

- ☒ Divisional.
- ☐ Continuation.
- ☐ Continuation-in-part (C-I-P).

## 2. Benefit of Prior U.S. Application(s) (35 U.S.C. Sections 119(e), 120, or 121)

**NOTE:** *A nonprovisional application may claim an invention disclosed in one or more prior filed copending nonprovisional applications or copending international applications designating the United States of America. In order for a nonprovisional application to claim the benefit of a prior filed copending nonprovisional application or copending international application designating the United States of America, each prior application must name as an inventor at least one inventor named in the later filed nonprovisional application and disclose the named inventor's invention claimed in at least one claim of the later filed nonprovisional application in the manner provided by the first paragraph of 35 U.S.C. Section 112. Each prior application must also be:*

*(i) An international application entitled to a filing date in accordance with PCT Article 11 and designating the United States of America; or*

*(ii) Complete as set forth in Section 1.51(b); or*

*(iii) Entitled to a filing date as set forth in Section 1.53(b) or Section 1.53(d) and include the basic filing fee set forth in Section 1.16; or*

*(iv) Entitled to a filing date as set forth in Section 1.53(b) and have paid therein the processing and retention fee set forth in Section 1.21(l) within the time period set forth in Section 1.53(f).*

37 C.F.R. Section 1.78(a)(1).

**WARNING:** *If an application claims the benefit of the filing date of an earlier filed application under 35 U.S.C. §§120, 121 or 365(c), the 20-year term of that application will be based upon the filing date of the earliest U.S. application that the application makes reference to under 35 U.S.C. §§ 120, 121 or 365(c). (35 U.S.C. 154(a)(2) does not take into account, for the determination of the patent term, any application on which priority is claimed under 35 U.S.C. §§ 119, 365(a) or 365(b).) For a C-I-P application, applicant should review whether any claim in the patent that will issue is supported by an earlier application and, if not, the applicant should consider canceling the reference to the earlier filed application. The term of a patent is not based on a claim-by-claim approach. See Notice of April 14, 1995, 60 Fed. Reg. 20,195, at 20,205.*

**WARNING:** 37 C.F.R. § 1.78(a)(2) deals with the time in which the claim for the benefit of an earlier filing date must be made and states:

"(2)(i) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending nonprovisional applications or international applications designating the United States of America must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate (see § 1.14).

(ii) This reference must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If the later-filed application is a nonprovisional application which entered the national stage from an international application after compliance with 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application sixteen months from the filing date of the prior-filed application. These time periods are not extendable. Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (a)(2)(i) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior-filed application. The time periods in this paragraph do not apply if the later-filed application is:

- (A) An application for a design patent;
- (B) An application filed under 35 U.S.C. 111(a) before November 29, 2000; or
- (C) A nonprovisional application which entered the national stage after compliance with 35 U.S.C. 371 from an international application filed under 35 U.S.C. 363 before November 29, 2000.

(iii) If the later-filed application is a nonprovisional application, the reference required by this paragraph must be included in an application data sheet (§ 1.76), or the specification must contain or be amended to contain such reference in the first sentence following the title.

(iv) The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior-filed application. The identification of an application by application number under this section is the identification of every application assigned that application number necessary for a specific reference required by 35 U.S.C. 120 to every such application assigned that application number."

**NOTE:** If the new application being transmitted is a divisional, continuation or a continuation-in-part of a parent case, or where the parent case is an International Application which designated the U.S., or benefit of a prior provisional application is claimed, then check the following item and complete and attach **ADDED PAGES FOR NEW APPLICATION TRANSMITTAL WHERE BENEFIT OF PRIOR U.S. APPLICATION(S) CLAIMED**.

[X] The new application being transmitted claims the benefit of prior U.S. application(s).  
Enclosed are **ADDED PAGES FOR NEW APPLICATION TRANSMITTAL**  
**WHERE BENEFIT OF PRIOR U.S. APPLICATION(S) CLAIMED**.

### 3. Papers Enclosed

#### A. Required for Filing Date under 37 C.F.R. Section 1.53(b) (Regular) or 37 C.F.R. Section 1.153 (Design) Application

107 Pages of Specification  
46 Pages of Claims  
       Sheets of Drawing

**WARNING:** *DO NOT submit original drawings. A high quality copy of the drawings should be supplied when filing a patent application. The drawings that are submitted to the Office must be on strong, white, smooth, and non-shiny paper and meet the standards according to Section 1.84. If corrections to the drawings are necessary, they should be made to the original drawing and a high-quality copy of the corrected original drawing then submitted to the Office. Only one copy is required or desired. For comments on proposed then-new 37 C.F.R. 1.84, see Notice of March 9, 1988. (1990 O.G. 57-62).*

**NOTE:** *"Identification of drawings. Identifying indicia, if provided, should include the title of the invention, inventor's name and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin."*

*(complete the following, if applicable)*

[ ] The enclosed drawing(s) are photograph(s).

**NOTE:** 37 C.F.R. 1.84  
"(b) Photographs.

*"(1) Black and white. Photographs, including photocopies of photographs, are not ordinarily permitted in utility and design patent applications. The Office will accept photographs in utility and design patent applications, however, if photographs are the only practicable medium for illustrating the claimed invention. For example, photographs, or photomicrographs of: electrophoresis gels, blots (e.g., immunological, western, Southern and northern), auto radiographs, cell cultures (stained and unstained), histological tissue cross sections (stained and unstained), animals, plants, in vivo imaging, thin layer chromatography plates, crystalline structures, and in a design patent application, ornamental effects, are acceptable. If the subject matter of the application admits of illustration by a drawing, the examiner may require a drawing in place of the photograph. The photographs must be of sufficient quality so that all details in the photographs are reproducible in the printed patent.*

*"(2) Color photographs. Color photographs will be accepted in utility and design patent applications if the conditions for accepting color drawings and black and white photographs have been satisfied. See paragraphs (a)(2) and (b)(1) of this section."*

[ ] The enclosed drawing(s) are in color. Three (3) sets of color drawings and a "PETITION TO ACCEPT COLOR DRAWING(S)" are attached. 37 C.F.R. §§ 1.84(a)(2) and 1.84(b).

**NOTE:** 37 C.F.R. 1.84(a)

*"(2) Color. On rare occasions color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in a utility or design patent application or the subject matter of a statutory invention registration. The color drawings must be of sufficient quality such that all details in the drawings are reproducible in black and white in the printed patent. Color drawings are not permitted in international applications (see PCT Rule 11.13), or in an application, or copy thereof, submitted under the Office electronic filing system. The Office will accept color drawings in utility or design patent applications and statutory invention registrations only after granting a petition filed under this paragraph explaining why the color drawings are necessary. Any such petition must include the following:*

- (i) *The fee set forth in § 1.17(h);*
- (ii) *Three (3) sets of color drawings;*
- (iii) *A black and white photocopy that accurately depicts, to the extent possible, the subject matter shown in the color drawing; and*

- (iv) *An amendment to the specification to insert (unless the specification contains or has been previously amended to contain) the following language as the first paragraph of the brief description of the drawings:*

*"The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Office upon request and payment of the necessary fee."*

- ☒ Formal  
☐ Informal

**B. Other Papers Enclosed**

10 Pages of declaration and power of attorney  
1 Pages of Abstract  
Other

**4. Additional Papers Enclosed**

- ☒ Amendment to claims
- ☒ Cancel in this application claims 21-30 before calculating the filing fee.  
☒ Add the claims shown in the attached Preliminary Amendment. (Claims added have been numbered consecutively following the highest numbered original claims.)
- ☐ Preliminary Amendment  
☒ Information Disclosure Statement (37 C.F.R. Section 1.98)

**WARNING:** *In order to ensure consideration of information previously submitted but which has not been considered in the parent application, an applicant must resubmit the information, complying with 37 C.F.R. § 1.97 and 37 C.F.R. § 1.98, in the continuing application filed under 37 C.F.R. § 1.53(b). See § 609B(3), M.P.E.P., 7<sup>th</sup> Edition, Rev. 1.*

- ☐ Form PTO-1449 (PTO/SB/08A and 08B)  
☐ Citations  
☐ Declaration of Biological Deposit  
☐ Submission of "Sequence Listing," computer readable copy and/or amendment pertaining thereto for biotechnology invention containing nucleotide and/or amino acid sequence.  
☐ Authorization of Attorney(s) to Accept and Follow Instructions from Representative  
☐ Special Comments  
☐ Request for Nonpublication of Application  
☐ Other